

CF.

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 18/2806 SC/CIVL

BETWEEN: JOHN TETE

Claimant

AND: MICHOU KALSAO

First Defendant

AND: DOMINIQUE YAKEULA, PENDI YAKEULA AND WILLIAM
YAKEULA

Second Defendants

Coram: Justice Oliver A. Saksak

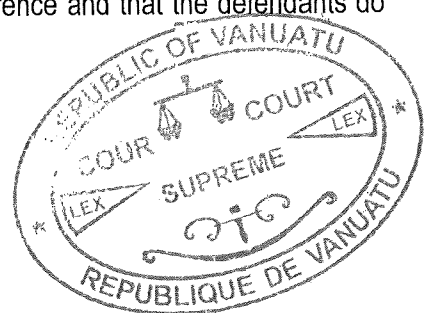
Counsel: Mary Grace Nari for the Claimant
Gregory Takau for the First and Second Defendants

Date of Hearing: 24th June 2019

Date of Judgment: 20th November 2019

JUDGMENT

1. Judgment is entered summarily in favour of the claimant pursuant to Rule 9.6 of the Civil Procedure Rules No.49 of 2002 (the Rules).
2. The claimant filed his claim on 15th October 2018 seeking an order that the defendant vacate Lease Title 11/0F24/014 (Title 014) within 14 days from the date of judgment and for costs. The claim is supported by the sworn statement of the claimant filed on 29th October 2018.
3. The defendants filed a joint defence on 26th October 2018. In essence the defendants say they should not vacate Title 014 because they have vested interest in it through the late Lisbeth Makambo, eldest sister of the Helene Makambo, the claimant's mother.
4. The claimant says the defendant's defence is not a good defence and that the defendants do not have any real prospect of defending the claim.



5. Rule 9.6 states:-

“Summary judgment

9.6 (1) This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant’s claim.

(2) The claimant may apply to the court for a summary judgment.

(3) An application for judgment must:

(a) be in Form 15, and

(b) have with it a sworn statement that:

(i) the facts in the claimant’s claim are true; and

(ii) the claimant believes there is no defence to the claim, and the reasons for this belief.

(4) The Claimant must:

(a) file the application and statement, and

(b) get a hearing date from the Court and ensure the date appears on the application, and

(c) serve a copy of the application and sworn statement on the defendant not less than 14 days before the hearing date.

(5) The defendant:

(a) may file a sworn statement setting out the reasons why he has an arguable defence; and

(b) must serve the statement on the claimant at least 7 days before the hearing date.

(6) the Claimant may file another sworn statement and must serve it on the defendant at least 2 days before the hearing date.

(7) If the court is satisfied that:

(a) the defendant has no real prospect of defending the claimant’s claim or part of the claim; and

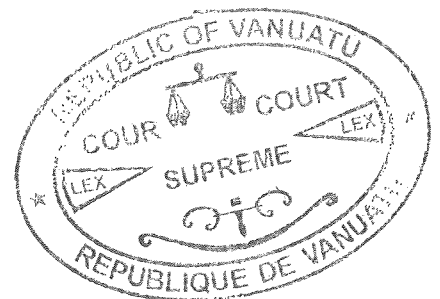
(b) there is no need for a trial of the claim or that part of the claim, the court may:

(c) give judgment for the claimant for the claim or part of the claim; and

(d) make any other orders the court thinks appropriate.

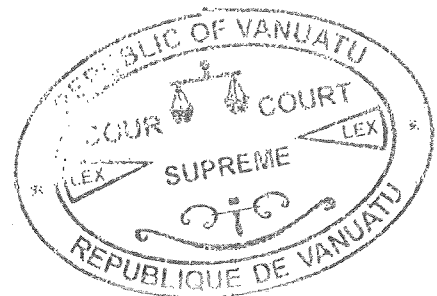
(8) If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.

(9) The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law.”



The facts

6. The claimant is the son of Helene Makambo Tete. Helene Makambo transferred her interest to Title 014 to the claimant on 18th May 2006.
7. Title 014 was initially registered on 3rd September 1985 in the name of Lisbeth Makambo and Helene Makambo as joint proprietors. Lisbeth and Helene Makambo were biological sisters. Lisbeth Makambo died on 18 September 1998. As such her interest was transmitted to the claimant's mother as the surviving and sole proprietor of Title 014 on 1st November 1999.
8. In or about 9 July 1985 Helene Makambo granted a power of attorney to the claimant to act generally in relation to her interests in Title 014.
9. On or about 8th October 1999 after the death of Lisbeth Makambo, the Claimant lodged an application for registration of transmission of Lisbeth's interests to Helene Makambo as surviving proprietor pursuant to section 84 of the Land Leases Act.
10. On 1st November 1999 the Director of Lands registered the transmission of Title 014 to Helene Makambo, the surviving proprietor.
11. Helene Makambo Tete transferred her interests to her son the Claimant on 16 November 2006.
12. The First Defendant Michou Kalsao is the son of the late Lisbeth Makambo. He invited the second defendants to reside on Title 014.
13. On 7th February 2018 the claimant give notice to vacate the property to the second defendants. They ignored the notice. On 11th April 2018, Mrs Nari issued the second notice to quit to the second defendants giving them 2 months to vacate the title. The defendant ignored this notice. On 23rd April 2018 Mrs Nari wrote a further letter acknowledging receipt of Mr Takau's letter of 16 April 2018 responding to Counsel's letter of 11th April 2018. Mrs Nari reminded Mr Takau about the provisions of sections 74 and 75 of the Land Leases Act. This notice was ignored by the defendants.



The Law

14. Section 15 of the Land Leases Act states-

“15. Rights of proprietor

The rights of a proprietor of a registered interest, whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all rights, privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –

- (a) *to the encumbrances and to the conditions and restrictions shown in the register;*
- (b) *unless the contrary is expressed in the register, to such of the liabilities, rights and interests as are declared by this Act not to require registration and are subsisting;*

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as trustee.”

15. Section 74 of the Land Leases Act states-

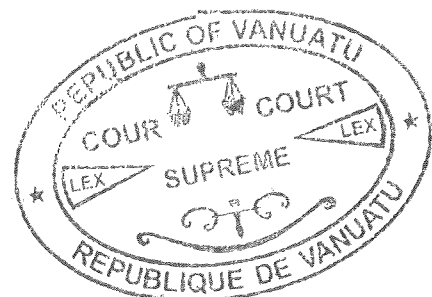
“74. Proprietorship in common

- (1) *Where a registered interest is vested in proprietors in common, the proprietors shall be entitled to undivided shares in the interest in such proportion as may be registered and on the death of any of the proprietors in common his share shall be administered as part of his estate.*
- (2) *No proprietor in common of a registered interest shall dispose of his undivided share in favour of any person other than another proprietor in common of the same interest except with the consent in writing of the remaining proprietor or proprietors of the interest, but such consent shall not be unreasonably withheld.”*

16. Section 75 of the Act states-

“75. Joint proprietorship

- (1) *Where a registered interest is vested in joint proprietors, the joint proprietors shall hold on the statutory trusts.*
- (2) *Where two or more persons are joint proprietors of such a registered interest –*
 - (a) *a disposition of that interest shall be made only by all the joint proprietors; and*
 - (b) *on the death of a joint proprietor the interest shall vest in the surviving proprietor or proprietors.”*



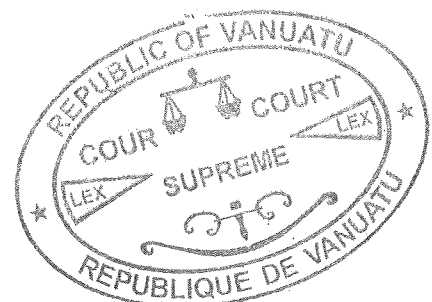
17. Section 84 of the Act states-

"84. Transmission on death of sole proprietor or proprietor in common

- (1) *If a sole proprietor or a proprietor in common of a registered interest dies, his personal representative, on application to the Director in the prescribed form accompanied by proof of his authority to act, shall be entitled to require the Director –*
- (a) *to register him by transmission as proprietor in place of the deceased with the addition after his name of the words "as executor of the will of deceased" or "as administrator of the estate of deceased" as the case may be; or*
- (b) *to register some other specified person as proprietor or proprietor in common of the deceased's interest.*
- (2) *For the purpose of subsection (1) authority to act shall consist of a grant of probate of the will, a grant of letters of administration or an order of a court."*

Discussion

18. Since the defendants filed their defence on 26th October 2018 they have not filed any sworn statements to support their defence.
19. The case was called for management conferences first on 10th April 2019. Neither Mr Takau nor his clients were present when the Court gave direction orders requiring them to file their sworn statements and making the matter returnable on 14th May 2019. On this date again Mr Takau and his clients did not attend. The matter was adjourned to 24th June 2019 for the hearing of the Claimant's application for summary judgment. He filed a sworn statement in support of the application on 21st May 2019. The application and sworn statement meet the requirements of Rule 9.6 (1), (2), (3) and (4) of the Rules.
20. On 24th June 2019 the defendants and their lawyer were yet again not present. The Court issued a Minute recording the positions of the parties and directed that written submissions in 14 days each by 8th July 2019 for the claimant and by 22nd July 2019 for the defendants.
21. The claimant filed submissions on 4th July 2019 and served it on Mr Takau on 15th July 2019. On 1st July 2019 the claimant filed proof of service of the application and sworn statements on Eileen Malthias at Kapapa Lawyer on 29 May 2019.
22. The defendants have not filed any submissions.



23. Pursuant to sections 74 and 75 of the Land Leases Act Title 014 was held in common and was subject to joint proprietorship in Lisbeth's and Helene Makambo's names. When Lisbeth died her proprietorship passed to the surviving proprietor who is Helene Makambo Tete. That is trite law. By section 15 of the Land Leases Act the Claimant's title is indefeasible unless and until proved otherwise.

24. Helene Makambo Tete transferred Title 014 to her son the claimant for the consideration of VT 500.000. That is trite law as well.

25. The defendant's pleaded in their defence that they have vested interest in Title 014. It is a bare defence without any evidence. It is rejected outright.

Conclusion

26. The claimant is successful in his claims and judgment is entered summarily in his favour.

The Orders

27. (i) The First and Second Defendants shall vacate Title 11/0F24/014 within 14 days from the date hereof (by 4th December 2019).
- (ii) The Claimant has liberty to apply for an enforcement warrant after 14 days have expired.
- (iii) The First and Second Defendants shall pay the Claimant's costs of and incidental to this action on the standard basis as agreed or taxed by the Master.

DATED at Port Vila this 20th day of November 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

